

104TH CONGRESS
1ST SESSION

S. 169

To curb the practice of imposing unfunded Federal mandates on States and local governments; to strengthen the partnership between the Federal Government and State, local and tribal governments; to end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local, and tribal governments without adequate funding, in a manner that may displace other essential governmental priorities; and to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations; and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 5, 1995

Mr. GRASSLEY (for Mr. KEMPTHORNE) introduced the following bill; which
was read the first time

A BILL

To curb the practice of imposing unfunded Federal mandates on States and local governments; to strengthen the partnership between the Federal Government and State, local and tribal governments; to end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local, and tribal governments without adequate funding, in a manner that may displace other essential governmental priorities; and to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements

under Federal statutes and regulations; and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Unfunded Mandate
5 Reform Act of 1995”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

8 (1) to strengthen the partnership between the
9 Federal Government and States, local governments,
10 and tribal governments;

11 (2) to end the imposition, in the absence of full
12 consideration by Congress, of Federal mandates on
13 States, local governments, and tribal governments
14 without adequate Federal funding, in a manner that
15 may displace other essential State, local, and tribal
16 governmental priorities;

17 (3) to assist Congress in its consideration of
18 proposed legislation establishing or revising Federal
19 programs containing Federal mandates affecting
20 States, local governments, tribal governments, and
21 the private sector by—

22 (A) providing for the development of infor-
23 mation about the nature and size of mandates
24 in proposed legislation; and

1 (B) establishing a mechanism to bring
2 such information to the attention of the Senate
3 and the House of Representatives before the
4 Senate and the House of Representatives vote
5 on proposed legislation;

6 (4) to promote informed and deliberate deci-
7 sions by Congress on the appropriateness of Federal
8 mandates in any particular instance;

9 (5) to require that Congress consider whether
10 to provide funding to assist State, local, and tribal
11 governments in complying with Federal mandates, to
12 require analyses of the impact of private sector man-
13 dates, and through the dissemination of that infor-
14 mation provide informed and deliberate decisions by
15 Congress and Federal agencies and retain competi-
16 tive balance between the public and private sectors;

17 (6) to establish a point-of-order vote on the con-
18 sideration in the Senate and House of Representa-
19 tives of legislation containing significant Federal
20 mandates; and

21 (7) to assist Federal agencies in their consider-
22 ation of proposed regulations affecting States, local
23 governments, and tribal governments, by—

24 (A) requiring that Federal agencies de-
25 velop a process to enable the elected and other

1 officials of States, local governments, and tribal
2 governments to provide input when Federal
3 agencies are developing regulations; and

4 (B) requiring that Federal agencies pre-
5 pare and consider better estimates of the budg-
6 etary impact of regulations containing Federal
7 mandates upon States, local governments, and
8 tribal governments before adopting such regula-
9 tions, and ensuring that small governments are
10 given special consideration in that process.

11 **SEC. 3. DEFINITIONS.**

12 (a) IN GENERAL.—For purposes of this Act—

13 (1) the terms defined under paragraphs (11)
14 through (21) of section 3 of the Congressional
15 Budget and Impoundment Control Act of 1974 (as
16 added by subsection (b) of this section) shall have
17 the meanings as so defined; and

18 (2) the term “Director” means the Director of
19 the Congressional Budget Office.

20 (b) CONGRESSIONAL BUDGET AND IMPOUNDMENT
21 CONTROL ACT OF 1974.—Section 3 of the Congressional
22 Budget and Impoundment Control Act of 1974 is amend-
23 ed by adding at the end thereof the following new para-
24 graphs:

1 “(11) The term ‘Federal intergovernmental
2 mandate’ means—

3 “(A) any provision in legislation, statute,
4 or regulation that—

5 “(i) would impose an enforceable duty
6 upon States, local governments, or tribal
7 governments, except—

8 “(I) a condition of Federal as-
9 sistance; or

10 “(II) a duty arising from partici-
11 pation in a voluntary Federal pro-
12 gram, except as provided in subpara-
13 graph (B)); or

14 “(ii) would reduce or eliminate the
15 amount of authorization of appropriations
16 for Federal financial assistance that would
17 be provided to States, local governments,
18 or tribal governments for the purpose of
19 complying with any such previously im-
20 posed duty unless such duty is reduced or
21 eliminated by a corresponding amount; or

22 “(B) any provision in legislation, statute,
23 or regulation that relates to a then-existing
24 Federal program under which \$500,000,000 or
25 more is provided annually to States, local gov-

ernments, and tribal governments under entitle-
ment authority, if the provision—

“(i)(I) would increase the stringency
of conditions of assistance to States, local
governments, or tribal governments under
the program; or

“(II) would place caps upon, or other-
wise decrease, the Federal Government’s
responsibility to provide funding to States,
local governments, or tribal governments
under the program; and

“(ii) the States, local governments, or
tribal governments that participate in the
Federal program lack authority under that
program to amend their financial or pro-
grammatic responsibilities to continue pro-
viding required services that are affected
by the legislation, statute or regulation.

“(12) The term ‘Federal private sector man-
date’ means any provision in legislation, statute, or
regulation that—

“(A) would impose an enforceable duty
upon the private sector except—

“(i) a condition of Federal assistance;
or

1 “(ii) a duty arising from participation
2 in a voluntary Federal program; or

3 “(B) would reduce or eliminate the amount
4 of authorization of appropriations for Federal
5 financial assistance that will be provided to the
6 private sector for the purposes of ensuring com-
7 pliance with such duty.

8 “(13) The term ‘Federal mandate’ means a
9 Federal intergovernmental mandate or a Federal
10 private sector mandate, as defined in paragraphs
11 (11) and (12).

12 “(14) The terms ‘Federal mandate direct costs’
13 and ‘direct costs’—

14 “(A)(i) in the case of a Federal intergov-
15 ernmental mandate, mean the aggregate esti-
16 mated amounts that all States, local govern-
17 ments, and tribal governments would be re-
18 quired to spend in order to comply with the
19 Federal intergovernmental mandate; or

20 “(ii) in the case of a provision referred to
21 in paragraph (11)(A)(ii), mean the amount of
22 Federal financial assistance eliminated or re-
23 duced.

24 “(B) in the case of a Federal private sec-
25 tor mandate, mean the aggregate estimated

1 amounts that the private sector will be required
2 to spend in order to comply with the Federal
3 private sector mandate;

4 “(C) shall not include—

5 “(i) estimated amounts that the
6 States, local governments, and tribal gov-
7 ernments (in the case of a Federal inter-
8 governmental mandate) or the private sec-
9 tor (in the case of a Federal private sector
10 mandate) would spend—

11 “(I) to comply with or carry out
12 all applicable Federal, State, local,
13 and tribal laws and regulations in ef-
14 fect at the time of the adoption of the
15 Federal mandate for the same activity
16 as is affected by that Federal man-
17 date; or

18 “(II) to comply with or carry out
19 State, local governmental, and tribal
20 governmental programs, or private-
21 sector business or other activities in
22 effect at the time of the adoption of
23 the Federal mandate for the same ac-
24 tivity as is affected by that mandate;
25 or

1 “(ii) expenditures to the extent that
2 such expenditures will be offset by any di-
3 rect savings to the States, local govern-
4 ments, and tribal governments, or by the
5 private sector, as a result of—

6 “(I) compliance with the Federal
7 mandate; or

8 “(II) other changes in Federal
9 law or regulation that are enacted or
10 adopted in the same bill or joint reso-
11 lution or proposed or final Federal
12 regulation and that govern the same
13 activity as is affected by the Federal
14 mandate; and

15 “(D) shall be determined on the assump-
16 tion that State, local, and tribal governments,
17 and the private sector will take all reasonable
18 steps necessary to mitigate the costs resulting
19 from the Federal mandate, and will comply with
20 applicable standards of practice and conduct es-
21 tablished by recognized professional or trade as-
22 sociations. Reasonable steps to mitigate the
23 costs shall not include increases in State, local,
24 or tribal taxes or fees.

1 “(15) The term ‘amount’ means the amount of
2 budget authority for any Federal grant assistance
3 program or any Federal program providing loan
4 guarantees or direct loans.

5 “(16) The term ‘private sector’ means individ-
6 uals, partnerships, associations, corporations, busi-
7 ness trusts, or legal representatives, organized
8 groups of individuals, and educational and other
9 nonprofit institutions.

10 “(17) The term ‘local government’ has the same
11 meaning as in section 6501(6) of title 31, United
12 States Code.

13 “(18) The term ‘tribal government’ means any
14 Indian tribe, band, nation, or other organized group
15 or community, including any Alaska Native village
16 or regional or village corporation as defined in or es-
17 tablished pursuant to the Alaska Native Claims Set-
18 tlement Act (83 Stat. 688; 43 U.S.C. 1601 et seq.)
19 which is recognized as eligible for the special pro-
20 grams and services provided by the United States to
21 Indians because of their special status as Indians.

22 “(19) The term ‘small government’ means any
23 small governmental jurisdictions defined in section
24 601(5) of title 5, United States Code, and any tribal
25 government.

1 “(20) The term ‘State’ has the same meaning
2 as in section 6501(9) of title 31, United States
3 Code.

4 “(21) The term ‘agency’ has the meaning as de-
5 fined in section 551(1) of title 5, United States
6 Code, but does not include independent regulatory
7 agencies, as defined in section 3502(10) of title 44,
8 United States Code.

9 “(22) The term ‘regulation’ or ‘rule’ has the
10 meaning of ‘rule’ as defined in section 601(2) of title
11 5, United States Code.”.

12 **SEC. 4. EXCLUSIONS.**

13 The provisions of this Act and the amendments made
14 by this Act shall not apply to any provision in a bill or
15 joint resolution before Congress and any provision in a
16 proposed or final Federal regulation that—

17 (1) enforces constitutional rights of individuals;

18 (2) establishes or enforces any statutory rights
19 that prohibit discrimination on the basis of race, re-
20 ligion, gender, national origin, or handicapped or
21 disability status;

22 (3) requires compliance with accounting and
23 auditing procedures with respect to grants or other
24 money or property provided by the United States
25 Government;

1 (4) provides for emergency assistance or relief
2 at the request of any State, local, or tribal govern-
3 ment or any official of a State, local, or tribal gov-
4 ernment;

5 (5) is necessary for the national security or the
6 ratification or implementation of international treaty
7 obligations; or

8 (6) the President designates as emergency legis-
9 lation and that the Congress so designates in stat-
10 ute.

11 **SEC. 5. AGENCY ASSISTANCE.**

12 Each agency shall provide to the Director of the Con-
13 gressional Budget Office such information and assistance
14 as the Director may reasonably request to assist the Direc-
15 tor in carrying out this Act.

16 **TITLE I—LEGISLATIVE**
17 **ACCOUNTABILITY AND REFORM**

18 **SEC. 101. LEGISLATIVE MANDATE ACCOUNTABILITY AND**
19 **REFORM.**

20 (a) IN GENERAL.—Title IV of the Congressional
21 Budget and Impoundment Control Act of 1974 is amend-
22 ed by adding at the end thereof the following new section:

23 **“SEC. 408. LEGISLATIVE MANDATE ACCOUNTABILITY AND**
24 **REFORM.**

25 **“(a) DUTIES OF CONGRESSIONAL COMMITTEES.—**

1 “(1) IN GENERAL.—When a committee of au-
2 thorization of the Senate or the House of Represent-
3 atives reports a bill or joint resolution of public
4 character that includes any Federal mandate, the re-
5 port of the committee accompanying the bill or joint
6 resolution shall contain the information required by
7 paragraphs (3) and (4).

8 “(2) SUBMISSION OF BILLS TO THE DIREC-
9 TOR.—When a committee of authorization of the
10 Senate or the House of Representatives orders re-
11 ported a bill or joint resolution of a public character,
12 the committee shall promptly provide the bill or joint
13 resolution to the Director of the Congressional
14 Budget Office and shall identify to the Director any
15 Federal mandates contained in the bill or resolution.

16 “(3) REPORTS ON FEDERAL MANDATES.—Each
17 report described under paragraph (1) shall con-
18 tain—

19 “(A) an identification and description of
20 any Federal mandates in the bill or joint resolu-
21 tion, including the expected direct costs to
22 State, local, and tribal governments, and to the
23 private sector, required to comply with the Fed-
24 eral mandates;

1 “(B) a qualitative, and if practicable, a
2 quantitative assessment of costs and benefits
3 anticipated from the Federal mandates (includ-
4 ing the effects on health and safety and the
5 protection of the natural environment); and

6 “(C) a statement of the degree to which a
7 Federal mandate affects both the public and
8 private sectors and the extent to which Federal
9 payment of public sector costs would affect the
10 competitive balance between State, local, or
11 tribal governments and privately owned busi-
12 nesses.

13 “(4) INTERGOVERNMENTAL MANDATES.—If any
14 of the Federal mandates in the bill or joint resolu-
15 tion are Federal intergovernmental mandates, the
16 report required under paragraph (1) shall also con-
17 tain—

18 “(A)(i) a statement of the amount, if any,
19 of increase or decrease in authorization of ap-
20 propriations under existing Federal financial
21 assistance programs, or of authorization of ap-
22 propriations for new Federal financial assist-
23 ance, provided by the bill or joint resolution and
24 usable for activities of State, local, or tribal

1 governments subject to the Federal intergovern-
2 mental mandates; and

3 “(ii) a statement of whether the committee
4 intends that the Federal intergovernmental
5 mandates be partly or entirely unfunded, and
6 if so, the reasons for that intention; and

7 “(B) any existing sources of Federal as-
8 sistance in addition to those identified in sub-
9 paragraph (A) that may assist State, local, and
10 tribal governments in meeting the direct costs
11 of the Federal intergovernmental mandates.

12 “(5) PREEMPTION CLARIFICATION AND INFOR-
13 MATION.—When a committee of authorization of the
14 Senate or the House of Representatives reports a
15 bill or joint resolution of public character, the com-
16 mittee report accompanying the bill or joint resolu-
17 tion shall contain, if relevant to the bill or joint reso-
18 lution, an explicit statement on the extent to which
19 the bill or joint resolution preempts any State, local,
20 or tribal law, and, if so, an explanation of the rea-
21 sons for such preemption.

22 “(6) PUBLICATION OF STATEMENT FROM THE
23 DIRECTOR.—

24 “(A) Upon receiving a statement (includ-
25 ing any supplemental statement) from the Di-

1 rector under subsection (b)(1), a committee of
2 the Senate or the House of Representatives
3 shall publish the statement in the committee re-
4 port accompanying the bill or joint resolution to
5 which the statement relates if the statement is
6 available at the time the report is printed.

7 “(B) If the statement is not published in
8 the report, or if the bill or joint resolution to
9 which the statement relates is expected to be
10 considered by the Senate or the House of Rep-
11 resentatives before the report is published, the
12 committee shall cause the statement, or a sum-
13 mary thereof, to be published in the Congres-
14 sional Record in advance of floor consideration
15 of the bill or joint resolution.

16 “(b) DUTIES OF THE DIRECTOR.—

17 “(1) STATEMENTS ON BILLS AND JOINT RESO-
18 LUTIONS OTHER THAN APPROPRIATIONS BILLS AND
19 JOINT RESOLUTIONS.—

20 “(A) FEDERAL INTERGOVERNMENTAL
21 MANDATES IN REPORTED BILLS AND RESOLU-
22 TIONS.—For each bill or joint resolution of a
23 public character reported by any committee of
24 authorization of the Senate or the House of
25 Representatives, the Director of the Congres-

1 sional Budget Office shall prepare and submit
2 to the committee a statement as follows:

3 “(i) If the Director estimates that the
4 direct cost of all Federal intergovernmental
5 mandates in the bill or joint resolution will
6 equal or exceed \$50,000,000 (adjusted an-
7 nually for inflation) in the fiscal year in
8 which any Federal intergovernmental man-
9 date in the bill or joint resolution (or in
10 any necessary implementing regulation)
11 would first be effective or in any of the 4
12 fiscal years following such fiscal year, the
13 Director shall so state, specify the esti-
14 mate, and briefly explain the basis of the
15 estimate.

16 “(ii) The estimate required under
17 clause (i) shall include estimates (and brief
18 explanations of the basis of the estimates)
19 of—

20 “(I) the total amount of direct
21 cost of complying with the Federal
22 intergovernmental mandates in the
23 bill or joint resolution; and

24 “(II) the amount, if any, of in-
25 crease in authorization of appropria-

1 tions under existing Federal financial
2 assistance programs, or of authoriza-
3 tion of appropriations for new Federal
4 financial assistance, provided by the
5 bill or joint resolution and usable by
6 State, local, or tribal governments for
7 activities subject to the Federal inter-
8 governmental mandates.

9 “(B) FEDERAL PRIVATE SECTOR MAN-
10 DATES IN REPORTED BILLS AND JOINT RESO-
11 LUTIONS.—For each bill or joint resolution of a
12 public character reported by any committees of
13 authorization of the Senate or the House of
14 Representatives, the Director of the Congres-
15 sional Budget Office shall prepare and submit
16 to the committee a statement as follows:

17 “(i) If the Director estimates that the
18 direct cost of all Federal private sector
19 mandates in the bill or joint resolution will
20 equal or exceed \$200,000,000 (adjusted
21 annually for inflation) in the fiscal year in
22 which any Federal private sector mandate
23 in the bill or joint resolution (or in any
24 necessary implementing regulation) would
25 first be effective or in any of the 4 fiscal

1 years following such fiscal year, the Direc-
2 tor shall so state, specify the estimate, and
3 briefly explain the basis of the estimate.

4 “(ii) Estimates required under this
5 subparagraph shall include estimates (and
6 a brief explanation of the basis of the esti-
7 mates) of—

8 “(I) the total amount of direct
9 costs of complying with the Federal
10 private sector mandates in the bill or
11 joint resolution; and

12 “(II) the amount, if any, of in-
13 crease in authorization of appropria-
14 tions under existing Federal financial
15 assistance programs, or of authoriza-
16 tion of appropriations for new Federal
17 financial assistance, provided by the
18 bill or joint resolution usable by the
19 private sector for the activities subject
20 to the Federal private sector man-
21 dates.

22 “(iii) If the Director determines that
23 it is not feasible to make a reasonable esti-
24 mate that would be required under clauses
25 (i) and (ii), the Director shall not make

1 the estimate, but shall report in the state-
 2 ment that the reasonable estimate cannot
 3 be made and shall include the reasons for
 4 that determination in the statement.

5 “(C) LEGISLATION FALLING BELOW THE
 6 DIRECT COSTS THRESHOLDS.—If the Director
 7 estimates that the direct costs of a Federal
 8 mandate will not equal or exceed the thresholds
 9 specified in paragraphs (A) and (B), the Direc-
 10 tor shall so state and shall briefly explain the
 11 basis of the estimate.

12 “(c) LEGISLATION SUBJECT TO POINT OF ORDER IN
 13 THE SENATE.—

14 “(1) IN GENERAL.—It shall not be in order in
 15 the Senate to consider—

16 “(A) any bill or joint resolution that is re-
 17 ported by a committee unless the committee has
 18 published a statement of the Director on the di-
 19 rect costs of Federal mandates in accordance
 20 with subsection (a)(6) before such consider-
 21 ation; and

22 “(B) any bill, joint resolution, amendment,
 23 motion, or conference report that would in-
 24 crease the direct costs of Federal intergovern-
 25 mental mandates by an amount that causes the

1 thresholds specified in subsection (b)(1)(A)(i) to
2 be exceeded, unless—

3 “(i) the bill, joint resolution, amend-
4 ment, motion, or conference report pro-
5 vides direct spending authority for each
6 fiscal year for the Federal intergovern-
7 mental mandates included in the bill, joint
8 resolution, amendment, motion, or con-
9 ference report in an amount that is equal
10 to the estimated direct costs of such man-
11 date;

12 “(ii) the bill, joint resolution, amend-
13 ment, motion, or conference report pro-
14 vides an increase in receipts and an in-
15 crease in direct spending authority for
16 each fiscal year for the Federal intergov-
17 ernmental mandates included in the bill,
18 joint resolution, amendment, motion, or
19 conference report in an amount equal to
20 the estimated direct costs of such mandate;
21 or

22 “(iii) the bill, joint resolution, amend-
23 ment, motion, or conference report in-
24 cludes an authorization for appropriations

1 in an amount equal to the estimated direct
2 costs of such mandate, and—

3 “(I) identifies a specific dollar
4 amount estimate of the full direct
5 costs of the mandate for each year or
6 other period during which the man-
7 date shall be in effect under the bill,
8 joint resolution, amendment, motion
9 or conference report, and such esti-
10 mate is consistent with the estimate
11 determined under paragraph (3) for
12 each fiscal year;

13 “(II) identifies any appropriation
14 bill that is expected to provide for
15 Federal funding of the direct cost re-
16 ferred to under subclause (IV)(aa);

17 “(III) identifies the minimum
18 amount that must be appropriated in
19 each appropriations bill referred to in
20 subclause (II), in order to provide for
21 full Federal funding of the direct
22 costs referred to in subclause (I); and

23 “(IV)(aa) designates a respon-
24 sible Federal agency and establishes
25 criteria and procedures under which

1 such agency shall implement less cost-
2 ly programmatic and financial respon-
3 sibilities of State, local, and tribal
4 governments in meeting the objectives
5 of the mandate, to the extent that an
6 appropriation Act does not provide for
7 the estimated direct costs of such
8 mandate as set forth under subclause
9 (III); or

10 “(bb) designates a responsible
11 Federal agency and establishes cri-
12 teria and procedures to direct that, if
13 an appropriation Act does not provide
14 for the estimated direct costs of such
15 mandate as set forth under subclause
16 (III), such agency shall declare such
17 mandate to be ineffective as of Octo-
18 ber 1 of the fiscal year for which the
19 appropriation is not at least equal to
20 the direct costs of the mandate.

21 “(2) RULE OF CONSTRUCTION.—The provisions
22 of paragraph (1)(B)(iii)(IV)(aa) shall not be con-
23 strued to prohibit or otherwise restrict a State, local,
24 or tribal government from voluntarily electing to re-
25 main subject to the original Federal intergovern-

1 mental mandate, complying with the programmatic
2 or financial responsibilities of the original Federal
3 intergovernmental mandate and providing the fund-
4 ing necessary consistent with the costs of Federal
5 agency assistance, monitoring, and enforcement.

6 “(3) COMMITTEE ON APPROPRIATIONS.—Para-
7 graph (1) shall not apply to matters that are within
8 the jurisdiction of the Committee on Appropriations
9 of the Senate or the House of Representatives.

10 “(4) DETERMINATION OF APPLICABILITY TO
11 PENDING LEGISLATION.—For purposes of this sub-
12 section, on questions regarding the applicability of
13 this Act to a pending bill, joint resolution, amend-
14 ment, motion, or conference report, the Committee
15 on Governmental Affairs of the Senate, or the Com-
16 mittee on Government Reform and Oversight of the
17 House of Representatives, as applicable, shall have
18 the authority to make the final determination.

19 “(5) DETERMINATIONS OF FEDERAL MANDATE
20 LEVELS.—For the purposes of this subsection, the
21 levels of Federal mandates for a fiscal year shall be
22 determined based on the estimates made by the
23 Committee on the Budget of the Senate or the
24 House of Representatives, as the case may be.

1 “(d) ENFORCEMENT IN THE HOUSE OF REPRESENT-
 2 ATIVES.—It shall not be in order in the House of Rep-
 3 resentatives to consider a rule or order that waives the
 4 application of subsection (c) to a bill or joint resolution
 5 reported by a committee of authorization.”.

6 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 7 The table of contents in section 1(b) of the Congressional
 8 Budget and Impoundment Control Act of 1974 is amend-
 9 ed by adding after the item relating to section 407 the
 10 following new item:

“Sec. 408. Legislative mandate accountability and reform.”.

11 **SEC. 102. ENFORCEMENT IN THE HOUSE OF REPRESENTA-**
 12 **TIVES.**

13 (a) MOTIONS TO STRIKE IN THE COMMITTEE OF THE
 14 WHOLE.—Clause 5 of rule XXIII of the Rules of the
 15 House of Representatives is amended by adding at the end
 16 the following:

17 “(c) In the consideration of any measure for amend-
 18 ment in the Committee of the Whole containing any Fed-
 19 eral mandate the direct costs of which exceed the threshold
 20 in section 408(c) of the Unfunded Mandate Reform Act
 21 of 1995, it shall always be in order, unless specifically
 22 waived by terms of a rule governing consideration of that
 23 measure, to move to strike such Federal mandate from
 24 the portion of the bill then open to amendment.”.

1 (b) COMMITTEE ON RULES REPORTS ON WAIVED
 2 POINTS OF ORDER.—The Committee on Rules shall in-
 3 clude in the report required by clause 1(d) of Rule XI (re-
 4 lating to its activities during the Congress) of the Rules
 5 of the House of Representatives a separate item identify-
 6 ing all waivers of points of order relating to Federal man-
 7 dates, listed by bill or joint resolution number and the sub-
 8 ject matter of that measure.

9 **SEC. 103. ASSISTANCE TO COMMITTEES AND STUDIES.**

10 The Congressional Budget and Impoundment Control
 11 Act of 1974 is amended—

12 (1) in section 202—

13 (A) in subsection (c)—

14 (i) by redesignating paragraph (2) as
 15 paragraph (3); and

16 (ii) by inserting after paragraph (1)
 17 the following new paragraph:

18 “(2) At the request of any committee of the
 19 Senate or the House of Representatives, the Office
 20 shall, to the extent practicable, consult with and as-
 21 sist such committee in analyzing the budgetary or fi-
 22 nancial impact of any proposed legislation that may
 23 have—

24 “(A) a significant budgetary impact on
 25 State, local, or tribal governments; or

1 “(B) a significant financial impact on the
2 private sector.”;

3 (B) by amending subsection (h) to read as
4 follows:

5 “(h) STUDIES.—

6 “(1) CONTINUING STUDIES.—The Director of
7 the Congressional Budget Office shall conduct con-
8 tinuing studies to enhance comparisons of budget
9 outlays, credit authority, and tax expenditures.

10 “(2) FEDERAL MANDATE STUDIES.—

11 “(A) At the request of any Chairman or
12 ranking member of the minority of a Committee
13 of the Senate or the House of Representatives,
14 the Director shall, to the extent practicable,
15 conduct a study of a Federal mandate legisla-
16 tive proposal.

17 “(B) In conducting a study on intergovern-
18 mental mandates under subparagraph (A), the
19 Director shall—

20 “(i) solicit and consider information
21 or comments from elected officials (includ-
22 ing their designated representatives) of
23 State, local, or tribal governments as may
24 provide helpful information or comments;

1 “(ii) consider establishing advisory
2 panels of elected officials or their des-
3 ignated representatives, of State, local, or
4 tribal governments if the Director deter-
5 mines that such advisory panels would be
6 helpful in performing responsibilities of the
7 Director under this section; and

8 “(iii) if, and to the extent that the Di-
9 rector determines that accurate estimates
10 are reasonably feasible, include estimates
11 of—

12 “(I) the future direct cost of the
13 Federal mandate to the extent that
14 such costs significantly differ from or
15 extend beyond the 5-year period after
16 the mandate is first effective; and

17 “(II) any disproportionate budg-
18 etary effects of Federal mandates
19 upon particular industries or sectors
20 of the economy, States, regions, and
21 urban or rural or other types of com-
22 munities, as appropriate.

23 “(C) In conducting a study on private sec-
24 tor mandates under subparagraph (A), the Di-
25 rector shall provide estimates, if and to the ex-

1 tent that the Director determines that such es-
2 timates are reasonably feasible, of—

3 “(i) future costs of Federal private
4 sector mandates to the extent that such
5 mandates differ significantly from or ex-
6 tend beyond the 5-year time period re-
7 ferred to in subparagraph (B)(iii)(I);

8 “(ii) any disproportionate financial ef-
9 fects of Federal private sector mandates
10 and of any Federal financial assistance in
11 the bill or joint resolution upon any par-
12 ticular industries or sectors of the econ-
13 omy, States, regions, and urban or rural or
14 other types of communities; and

15 “(iii) the effect of Federal private sec-
16 tor mandates in the bill or joint resolution
17 on the national economy, including the ef-
18 fect on productivity, economic growth, full
19 employment, creation of productive jobs,
20 and international competitiveness of
21 United States goods and services.”; and

22 (2) in section 301(d) by adding at the end
23 thereof the following new sentence: “Any Committee
24 of the House of Representatives or the Senate that
25 anticipates that the committee will consider any pro-

1 posed legislation establishing, amending, or reau-
2 thorizing any Federal program likely to have a sig-
3 nificant budgetary impact on any State, local, or
4 tribal government, or likely to have a significant fi-
5 nancial impact on the private sector, including any
6 legislative proposal submitted by the executive
7 branch likely to have such a budgetary or financial
8 impact, shall include its views and estimates on that
9 proposal to the Committee on the Budget of the ap-
10 plicable House.”.

11 **SEC. 104. AUTHORIZATION OF APPROPRIATIONS.**

12 There are authorized to be appropriated to the Con-
13 gressional Budget Office \$4,500,000 for each of the fiscal
14 years 1996, 1997, 1998, 1999, 2000, 2001, and 2002 to
15 carry out the provisions of this Act.

16 **SEC. 105. EXERCISE OF RULEMAKING POWERS.**

17 The provisions of sections 101, 102, 103, 104, and
18 107 are enacted by Congress—

19 (1) as an exercise of the rulemaking power of
20 the Senate and the House of Representatives, re-
21 spectively, and as such they shall be considered as
22 part of the rules of such House, respectively, and
23 such rules shall supersede other rules only to the ex-
24 tent that they are inconsistent therewith; and

1 (2) with full recognition of the constitutional
 2 right of either House to change such rules (so far
 3 as relating to such House) at any time, in the same
 4 manner, and to the same extent as in the case of
 5 any other rule of each House.

6 **SEC. 106. REPEAL OF CERTAIN ANALYSIS BY CONGRES-**
 7 **SIONAL BUDGET OFFICE.**

8 (a) IN GENERAL.—Section 403 of the Congressional
 9 Budget Act of 1974 (2 U.S.C. 653) is repealed.

10 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 11 The table of contents in section 1(b) of the Congressional
 12 Budget and Impoundment Control Act of 1974 is amend-
 13 ed by striking out the item relating to section 403.

14 **SEC. 107. EFFECTIVE DATE.**

15 This title shall take effect on January 1, 1996 and
 16 shall apply only to legislation introduced on and after such
 17 date.

18 **TITLE II—REGULATORY**
 19 **ACCOUNTABILITY AND REFORM**

20 **SEC. 201. REGULATORY PROCESS.**

21 (a) IN GENERAL.—Each agency shall, to the extent
 22 permitted in law—

23 (1) assess the effects of Federal regulations on
 24 State, local, and tribal governments (other than to
 25 the extent that such regulations incorporate require-

1 ments specifically set forth in legislation), and the
 2 private sector including specifically the availability of
 3 resources to carry out any Federal intergovern-
 4 mental mandates in those regulations; and

5 (2) seek to minimize those burdens that unique-
 6 ly or significantly affect such governmental entities,
 7 consistent with achieving statutory and regulatory
 8 objectives.

9 (b) STATE, LOCAL, AND TRIBAL GOVERNMENT
 10 INPUT.—Each agency shall, to the extent permitted in
 11 law, develop an effective process to permit elected officials
 12 (or their designated representatives) of State, local, and
 13 tribal governments to provide meaningful and timely input
 14 in the development of regulatory proposals containing sig-
 15 nificant Federal intergovernmental mandates. Such a
 16 process shall be consistent with all applicable laws.

17 (c) AGENCY PLAN.—

18 (1) EFFECTS ON STATE, LOCAL AND TRIBAL
 19 GOVERNMENTS.—Before establishing any regulatory
 20 requirements that might significantly or uniquely af-
 21 fect small governments, agencies shall have devel-
 22 oped a plan under which the agency shall—

23 (A) provide notice of the contemplated re-
 24 quirements to potentially affected small govern-
 25 ments, if any;

1 (B) enable officials of affected small gov-
 2 ernments to provide input under subsection (b);
 3 and

4 (C) inform, educate, and advise small gov-
 5 ernments on compliance with the requirements.

6 (2) AUTHORIZATION OF APPROPRIATIONS.—

7 There are authorized to be appropriated to each
 8 agency to carry out the provisions of this section,
 9 and for no other purpose, such sums as are nec-
 10 essary.

11 **SEC. 202. STATEMENTS TO ACCOMPANY SIGNIFICANT REG-**
 12 **ULATORY ACTIONS.**

13 (a) IN GENERAL.—Before promulgating any final
 14 rule that includes any Federal intergovernmental mandate
 15 that may result in the expenditure by State, local, or tribal
 16 governments, and the private sector, in the aggregate, of
 17 \$100,000,000 or more (adjusted annually for inflation by
 18 the Consumer Price Index) in any 1 year, and before pro-
 19 mulgating any general notice of proposed rulemaking that
 20 is likely to result in promulgation of any such rule, the
 21 agency shall prepare a written statement containing—

22 (1) estimates by the agency, including the un-
 23 derlying analysis, of the anticipated costs to State,
 24 local, and tribal governments and the private sector
 25 of complying with the Federal intergovernmental

1 mandate, and of the extent to which such costs may
2 be paid with funds provided by the Federal Govern-
3 ment or otherwise paid through Federal financial
4 assistance;

5 (2) estimates by the agency, if and to the ex-
6 tent that the agency determines that accurate esti-
7 mates are reasonably feasible, of—

8 (A) the future costs of the Federal inter-
9 governmental mandate; and

10 (B) any disproportionate budgetary effects
11 of the Federal intergovernmental mandate upon
12 any particular regions of the Nation or particu-
13 lar State, local, or tribal governments, urban or
14 rural or other types of communities;

15 (3) a qualitative, and if possible, a quantitative
16 assessment of costs and benefits anticipated from
17 the Federal intergovernmental mandate (such as the
18 enhancement of health and safety and the protection
19 of the natural environment);

20 (4) the effect of the Federal private sector man-
21 date on the national economy, including the effect on
22 productivity, economic growth, full employment, cre-
23 ation of productive jobs, and international competi-
24 tiveness of United States goods and services; and

1 (5)(A) a description of the extent of the agen-
2 cy's prior consultation with elected representatives
3 (or their designated representatives) of the affected
4 State, local, and tribal governments;

5 (B) a summary of the comments and concerns
6 that were presented by State, local, or tribal govern-
7 ments either orally or in writing to the agency;

8 (C) a summary of the agency's evaluation of
9 those comments and concerns; and

10 (D) the agency's position supporting the need
11 to issue the regulation containing the Federal inter-
12 governmental mandates (considering, among other
13 things, the extent to which costs may or may not be
14 paid with funds provided by the Federal Govern-
15 ment).

16 (b) PROMULGATION.—In promulgating a general no-
17 tice of proposed rulemaking or a final rule for which a
18 statement under subsection (a) is required, the agency
19 shall include in the promulgation a summary of the infor-
20 mation contained in the statement.

21 (c) PREPARATION IN CONJUNCTION WITH OTHER
22 STATEMENT.—Any agency may prepare any statement re-
23 quired under subsection (a) in conjunction with or as a
24 part of any other statement or analysis, provided that the

1 statement or analysis satisfies the provisions of subsection
2 (a).

3 **SEC. 203. ASSISTANCE TO THE CONGRESSIONAL BUDGET**
4 **OFFICE.**

5 The Director of the Office of Management and Budget
6 et shall—

7 (1) collect from agencies the statements pre-
8 pared under section 202; and

9 (2) periodically forward copies of such state-
10 ments to the Director of the Congressional Budget
11 Office on a reasonably timely basis after promulga-
12 tion of the general notice of proposed rulemaking or
13 of the final rule for which the statement was pre-
14 pared.

15 **SEC. 204. PILOT PROGRAM ON SMALL GOVERNMENT FLEXI-**
16 **BILITY.**

17 (a) IN GENERAL.—The Director of the Office of
18 Management and Budget, in consultation with Federal
19 agencies, shall establish pilot programs in at least 2 agen-
20 cies to test innovative, and more flexible regulatory ap-
21 proaches that—

22 (1) reduce reporting and compliance burdens on
23 small governments; and

24 (2) meet overall statutory goals and objectives.

1 (b) PROGRAM FOCUS.—The pilot programs shall
 2 focus on rules in effect or proposed rules, or a combination
 3 thereof.

4 **TITLE III—REVIEW OF UN-**
 5 **FUNDED FEDERAL MAN-**
 6 **DATES**

7 **SEC. 301. ESTABLISHMENT.**

8 There is established a commission which shall be
 9 known as the “Commission on Unfunded Federal Man-
 10 dates” (in this title referred to as the “Commission”).

11 **SEC. 302. REPORT ON UNFUNDED FEDERAL MANDATES BY**
 12 **THE COMMISSION.**

13 (a) IN GENERAL.—The Commission shall in accord-
 14 ance with this section—

15 (1) investigate and review the role of unfunded
 16 Federal mandates in intergovernmental relations and
 17 their impact on local, State, and Federal Govern-
 18 ment objectives and responsibilities; and

19 (2) make recommendations to the President
 20 and the Congress regarding—

21 (A) allowing flexibility for States, local,
 22 and tribal governments in complying with spe-
 23 cific unfunded Federal mandates for which
 24 terms of compliance are unnecessarily rigid or
 25 complex;

1 (B) reconciling any 2 or more unfunded
2 Federal mandates which impose contradictory
3 or inconsistent requirements;

4 (C) terminating unfunded Federal man-
5 dates which are duplicative, obsolete, or lacking
6 in practical utility;

7 (D) suspending, on a temporary basis, un-
8 funded Federal mandates which are not vital to
9 public health and safety and which compound
10 the fiscal difficulties of States, local, and tribal
11 governments, including recommendations for
12 triggering such suspension;

13 (E) consolidating or simplifying unfunded
14 Federal mandates, or the planning or reporting
15 requirements of such mandates, in order to re-
16 duce duplication and facilitate compliance by
17 States, local, and tribal governments with those
18 mandates; and

19 (F) establishing common Federal defini-
20 tions or standards to be used by States, local,
21 and tribal governments in complying with un-
22 funded Federal mandates that use different
23 definitions or standards for the same terms or
24 principles.

1 (3) IDENTIFICATION OF RELEVANT UNFUNDED
2 FEDERAL MANDATES.—Each recommendation under
3 paragraph (2) shall, to the extent practicable, iden-
4 tify the specific unfunded Federal mandates to
5 which the recommendation applies.

6 (b) CRITERIA.—

7 (1) IN GENERAL.—The Commission shall estab-
8 lish criteria for making recommendations under sub-
9 section (a).

10 (2) ISSUANCE OF PROPOSED CRITERIA.—The
11 Commission shall issue proposed criteria under this
12 subsection not later than 60 days after the date of
13 the enactment of this Act, and thereafter provide a
14 period of 30 days for submission by the public of
15 comments on the proposed criteria.

16 (3) FINAL CRITERIA.—Not later than 45 days
17 after the date of issuance of proposed criteria, the
18 Commission shall—

19 (A) consider comments on the proposed
20 criteria received under paragraph (2);

21 (B) adopt and incorporate in final criteria
22 any recommendations submitted in those com-
23 ments that the Commission determines will aid
24 the Commission in carrying out its duties under
25 this section; and

1 (C) issue final criteria under this sub-
2 section.

3 (c) PRELIMINARY REPORT.—

4 (1) IN GENERAL.—Not later than 9 months
5 after the date of the enactment of this Act, the
6 Commission shall—

7 (A) prepare and publish a preliminary re-
8 port on its activities under this subtitle, includ-
9 ing preliminary recommendations pursuant to
10 subsection (a);

11 (B) publish in the Federal Register a no-
12 tice of availability of the preliminary report;
13 and

14 (C) provide copies of the preliminary re-
15 port to the public upon request.

16 (2) PUBLIC HEARINGS.—The Commission shall
17 hold public hearings on the preliminary rec-
18 ommendations contained in the preliminary report of
19 the Commission under this subsection.

20 (d) FINAL REPORT.—Not later than 3 months after
21 the date of the publication of the preliminary report under
22 subsection (c), the Commission shall submit to the Con-
23 gress, including the Committee on Government Reform
24 and Oversight of the House of Representatives and the
25 Committee on Governmental Affairs of the Senate, and

1 to the President a final report on the findings, conclusions,
2 and recommendations of the Commission under this sec-
3 tion.

4 **SEC. 303. MEMBERSHIP.**

5 (a) NUMBER AND APPOINTMENT.—

6 (1) IN GENERAL.—The Commission shall be
7 composed of 9 members appointed from individuals
8 who possess extensive leadership experience in and
9 knowledge of States, local, and tribal governments
10 and intergovernmental relations, including State and
11 local elected officials, as follows:

12 (A) 3 members appointed by the Speaker
13 of the House of Representatives, in consultation
14 with the minority leader of the House of Rep-
15 resentatives.

16 (B) 3 members appointed by the majority
17 leader of the Senate, in consultation with the
18 minority leader of the Senate.

19 (C) 3 members appointed by the President.

20 (2) LIMITATION.—An individual who is a Mem-
21 ber or employee of the Congress may not be ap-
22 pointed or serve as a member of the Commission.

23 (b) WAIVER OF LIMITATION ON EXECUTIVE SCHED-
24 ULE POSITIONS.—Appointments may be made under this

1 section without regard to section 5311(b) of title 5, United
2 States Code.

3 (c) TERMS.—

4 (1) IN GENERAL.—Each member of the Com-
5 mission shall be appointed for the life of the Com-
6 mission.

7 (2) VACANCIES.—A vacancy in the Commission
8 shall be filled in the manner in which the original
9 appointment was made.

10 (d) BASIC PAY.—

11 (1) RATES OF PAY.—Members of the Commis-
12 sion shall serve without pay.

13 (2) PROHIBITION OF COMPENSATION OF FED-
14 ERAL EMPLOYEES.—Members of the Commission
15 who are full-time officers or employees of the United
16 States may not receive additional pay, allowances, or
17 benefits by reason of their service on the Commis-
18 sion.

19 (e) TRAVEL EXPENSES.—Each member of the Com-
20 mission shall receive travel expenses, including per diem
21 in lieu of subsistence, in accordance with sections 5702
22 and 5703 of title 5, United States Code.

23 (f) CHAIRPERSON.—The President shall designate a
24 member of the Commission as Chairperson at the time of
25 the appointment of that member.

1 (g) MEETINGS.—

2 (1) IN GENERAL.—Subject to paragraph (2),
3 the Commission shall meet at the call of the Chair-
4 person or a majority of its members.

5 (2) FIRST MEETING.—The Commission shall
6 convene its first meeting by not later than 45 days
7 after the date of the completion of appointment of
8 the members of the Commission.

9 (3) QUORUM.—A majority of members of the
10 Commission shall constitute a quorum but a lesser
11 number may hold hearings.

12 **SEC. 304. DIRECTOR AND STAFF OF COMMISSION; EXPERTS**
13 **AND CONSULTANTS.**

14 (a) DIRECTOR.—The Commission shall, without re-
15 gard to section 5311(b) of title 5, United States Code,
16 have a Director who shall be appointed by the Commis-
17 sion. The Director shall be paid at the rate of basic pay
18 payable for level IV of the Executive Schedule.

19 (b) STAFF.—With the approval of the Commission,
20 and without regard to section 5311(b) of title 5, United
21 States Code, the Director may appoint and fix the pay
22 of such staff as is sufficient to enable the Commission to
23 carry out its duties.

24 (c) APPLICABILITY OF CERTAIN CIVIL SERVICE
25 LAWS.—The Director and staff of the Commission may

1 be appointed without regard to the provisions of title 5,
2 United States Code, governing appointments in the com-
3 petitive service, and may be paid without regard to the
4 provisions of chapter 51 and subchapter III of chapter 53
5 of that title relating to classification and General Schedule
6 pay rates, except that an individual so appointed may not
7 receive pay in excess of the annual rate payable under
8 section 5376 of title 5, United States Code.

9 (d) EXPERTS AND CONSULTANTS.—The Commission
10 may procure temporary and intermittent services of ex-
11 perts or consultants under section 3109(b) of title 5,
12 United States Code.

13 (e) STAFF OF FEDERAL AGENCIES.—Upon request
14 of the Director, the head of any Federal department or
15 agency may detail, on a reimbursable basis, any of the
16 personnel of that department or agency to the Commission
17 to assist it in carrying out its duties under this title.

18 **SEC. 305. POWERS OF COMMISSION.**

19 (a) HEARINGS AND SESSIONS.—The Commission
20 may, for the purpose of carrying out this title, hold hear-
21 ings, sit and act at times and places, take testimony, and
22 receive evidence as the Commission considers appropriate.

23 (b) POWERS OF MEMBERS AND AGENTS.—Any mem-
24 ber or agent of the Commission may, if authorized by the

1 Commission, take any action which the Commission is
2 authorized to take by this section.

3 (c) OBTAINING OFFICIAL DATA.—The Commission
4 may secure directly from any department or agency of the
5 United States information necessary to enable it to carry
6 out this title, except information—

7 (1) which is specifically exempted from disclo-
8 sure by law; or

9 (2) which that department or agency deter-
10 mines will disclose—

11 (A) matters necessary to be kept secret in
12 the interests of national defense or the con-
13 fidential conduct of the foreign relations of the
14 United States;

15 (B) information relating to trade secrets or
16 financial or commercial information pertaining
17 specifically to a given person if the information
18 has been obtained by the Government on a con-
19 fidential basis, other than through an applica-
20 tion by such person for a specific financial or
21 other benefit, and is required to be kept secret
22 in order to prevent undue injury to the competi-
23 tive position of such person; or

24 (C) personnel or medical data or similar
25 data the disclosure of which would constitute a

1 clearly unwarranted invasion of personal pri-
2 vacy;

3 unless the portions containing such matters, infor-
4 mation, or data have been excised.

5 Upon request of the Chairperson of the Commission, the
6 head of that department or agency shall furnish that infor-
7 mation to the Commission.

8 (d) **MAILS.**—The Commission may use the United
9 States mails in the same manner and under the same con-
10 ditions as other departments and agencies of the United
11 States.

12 (e) **ADMINISTRATIVE SUPPORT SERVICES.**—Upon
13 the request of the Commission, the Administrator of Gen-
14 eral Services shall provide to the Commission, on a reim-
15 bursable basis, the administrative support services nec-
16 essary for the Commission to carry out its duties under
17 this title.

18 (f) **CONTRACT AUTHORITY.**—The Commission may,
19 subject to appropriations, contract with and compensate
20 government and private agencies or persons for property
21 and services used to carry out its duties under this title.

22 **SEC. 306. TERMINATION.**

23 The Commission shall terminate 90 days after sub-
24 mitting its final report pursuant to section 302(d).

1 **SEC. 307. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated to the Com-
3 mission \$1,000,000 to carry out this title.

4 **SEC. 308. DEFINITION.**

5 As used in this title, the term “unfunded Federal
6 mandate” means—

7 (1) any provision in statute or regulation that
8 imposes an enforceable duty upon States, local gov-
9 ernments, or tribal governments including a condi-
10 tion of Federal assistance or a duty arising from
11 participation in a voluntary Federal program;

12 (2) relates to a Federal program under which
13 Federal financial assistance is provided to States,
14 local governments, or tribal governments under enti-
15 tlement authority; or

16 (3) that imposes any other unfunded obligation
17 on States, local governments, or tribal governments.

18 **SEC. 309. EFFECTIVE DATE.**

19 This title shall take effect 60 days after the date of
20 the enactment of this Act.

21 **TITLE IV—JUDICIAL REVIEW**

22 **SEC. 401. JUDICIAL REVIEW.**

23 (a) IN GENERAL.—Any statement or report prepared
24 under this Act, and any compliance or noncompliance with
25 the provisions of this Act, and any determination concern-

1 ing the applicability of the provisions of this Act shall not
 2 be subject to judicial review.

3 (b) RULE OF CONSTRUCTION.—No provision of this
 4 Act or amendment made by this Act shall be construed
 5 to create any right or benefit, substantive or procedural,
 6 enforceable by any person in any administrative or judicial
 7 action. No ruling or determination made under the provi-
 8 sions of this Act or amendments made by this Act shall
 9 be considered by any court in determining the intent of
 10 Congress or for any other purpose.



S 169 IS—2

S 169 IS—3

S 169 IS—4